319, 320, 107 N. Y. Supp. 621, 622. Under neither view has the practice been used for any purpose other than to procure the testimony or deposition of a witness otherwise unavailable. See WEEKS ON DEPOSITIONS, § 128. And the execution of letters rogatory rests entirely upon principles of comity. Under the theory of our law a personal judgment against a non-resident is a nullity without personal service of process. *Pennoyer* v. *Neff*, 95 U. S. 714. And service out of the jurisdiction, even though accepted, is not sufficient. *Scott* v. *Noble*, 72 Pa. St. 115. Accordingly, in the principal case, if service of process were necessary to give the Mexican court jurisdiction, the federal court was clearly correct in refusing to aid in effecting a result contrary to the policy of our legal system. *Emery* v. *Burbank*, 163 Mass. 326. If the purpose were merely the protection of the defendant, this result is accomplished without danger of prejudice by giving him informal notice of receipt of the request. The same conclusion was reached by the New York courts in a similar case. *Matter of Romero*, *supra*.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — EXPULSION OF COMPETING SHAREHOLDERS BY AMENDING BY-LAWS. — Section 13 of the Companies Act of 1908 (8 EDW. VII, c. 69) permits a company to introduce into its altered articles anything that might have been included in its general articles. A company in pursuance of this power *bona fide* passed an amendment which provided that the directors could require any shareholder who competed with the company's business to transfer his shares to nominees of the directors. The plaintiffs, minority shareholders, carried on a competing business, and a declaration is sought by them that the alteration was invalid as against them. *Held*, that the alteration is valid. *Sidebottom* v. *Kershaw Leese & Co., Ltd.*, [1920] 1 Ch. 154.

Where a contract with a member of a corporation either expressly or impliedly is made subject to future by-laws as well as to those already existing, a later amendment becomes a binding portion of the contract. *Fullenwider* v. *Sup. Council R. L.*, 180 Ill. 621, 54 N. E. 485; *Stohr* v. *San Francisco M. F.*, 82 Cal. 57, 22 Pac. 1125; *Allen* v. *Gold Reefs of West Africa*, [1900] 1 Ch. 656. Not every alteration, however, will be sustained; the power of change must not be exercised unreasonably. 1 MACHEN, CORPORATIONS, § 702; BOISOT, BY-LAWS, § 123. Thus by-laws which impair vested rights have been held invalid in the United States, though precisely what constitutes a vested right is the subject of much confusion. *Supreme Council A. L. H.* v. *Champe*, 127 Fed. 541; *Weber* v. *Supreme Tent K. M. W.*, 172 N. Y. 490, 65 N. E. 258. But see *Andrews* v. *Gold Meter Co.*, [1897] 1 Ch. 361. Restraints on the alienation of stock have uniformly been held invalid. *McNulta* v. *Corn Belt Bank*, 164 Ill. 427, 45 N. E. 954; *Bloede Co.* v. *Bloede*, 84 Md. 129, 34 Atl. 1127. And so with restrictions on the right of members to sue the corporation. *Insurance Co.* v. *Morse*, 20 Wall. (U. S.) 445; *MacMahon* v. *Sup. Tent, K. M. W.*, 151 Mo. 522, 52 S. W. 384; *Hope* v. *International Fin. Soc.*, 4 Ch. D. 327. A by-law which constitutes an unreasonable restraint of trade is also void. *Ipswich Tailors Case*, 11 Coke, 53 *a*; *Inter-Ocean Pub. Co.* v. *Associated Press*, 184 Ill. 438, 56 N. E. 822. The English courts give far wider scope to the corporate power of change than do the American courts, possibly because of the broad, inclusive language contained in Section 13 of the Companies Act. See 1 MACHEN, CORPORATIONS, § 721. It was not difficult, therefore, for the court to sustain the altered article in the principal case since it was intended as a reasonable protection of corporate interests and would undoubtedly have been sustained even in the United States.

CORPORATIONS — STOCKHOLDERS: RIGHT TO SHARE IN CORPORATE ASSETS — TRANSFEREE OF STOCK FROM A WRONGFUL STOCKHOLDER. — A stockholder

brought a representative action on behalf of the corporation against its directors for damages due to the negligent administration of corporate affairs. The plaintiff had acquired a part of his stock from the negligent directors after they had been guilty of breaches of duty. *Held*, that there could be no recovery on this stock. *Harris* v. *Rogers*, 179 N. Y. Supp. 799 (App. Div.).

By the weight of authority no stockholder can bring a representative action on behalf of the corporation if his transferor participated in the wrong, on the ground that a stockholder, like the transferee of a chose in action, stands in the shoes of his transferor. *Boldenweck* v. *Bullis*, 40 Colo. 253, 90 Pac. 634. See also *Babcock* v. *Farwell*, 245 Ill. 14, 41, 91 N. E. 683, 692. *Contra*, *Parsons* v. *Joseph*, 92 Ala. 403, 8 So. 788. This view overlooks the fact that in a representative action a stockholder acts in behalf of the corporation, and fails to perceive that the guilt of a stockholder should be only a personal bar against his participation in the fruits of the action. See *Babcock* v. *Farwell*, *supra*. The majority view is also due in part to the interpretation of Equity Rule 94 of the Supreme Court — which allows a stockholder to bring a representative action only if he owned stock at the time of the wrong, or acquired it subsequently by operation of law — as the statement of a substantive equity principle. See *Home Fire Ins. Co.* v. *Barber*, 67 Neb. 644, 656–662, 93 N. W. 1024, 1029–1031. But this rule is merely procedural, to prevent frauds on the jurisdiction of the federal courts. See *Quincy* v. *Steel*, 120 U. S. 241, 245, 248; *Venner* v. *Great Northern Ry.*, 209 U. S. 24, 34. It is submitted that the majority view is further objectionable in that it impairs the marketability of stock in general. See WARREN, CASES ON CORPORATIONS, 886, note.

CRIMINAL LAW — TRIAL — REVERSIBLE ERROR TO INSTRUCT JURY CONCERNING A DEGREE OF HOMICIDE LESS THAN THAT SHOWN BY THE EVIDENCE. — The evidence in a murder trial indicated clearly that the killing was accomplished by lying in wait, and that it was done maliciously, deliberately and with premeditation. Over the objection of the defendant, the court instructed the jury as to both first and second degree murder. The jury found the accused guilty of the lower grade. *Held*, that a new trial be granted. *Dickens* v. *People*, 186 Pac. 277 (Colo.).

It is well established that it is not error for a court to confine its charge to first degree murder, when all the evidence indicates either that grade of the offense or innocence. *Jarvis* v. *State*, 70 Ark. 613, 67 S. W. 76; *People* v. *Repke*, 103 Mich. 459, 61 N. W. 861; *State* v. *Cox*, 110 N. C. 503, 14 S. E. 688. The present case goes a step further, and holds that it is erroneous for a trial court, in such a case, to charge on anything but first degree murder, a view supported by the weight of authority. *State* v. *Stoeckli*, 71 Mo. 559; *Dresback* v. *State*, 38 Oh. St. 365. The error consists in the fact that jurors who have a reasonable doubt of the accused's guilt, and who should accordingly vote for an acquittal, may conceivably compromise with that doubt by finding the accused guilty of a lower degree of homicide. See *State* v. *Mahly*, 68 Mo. 315. Confining instructions to first-degree murder will often be of practical benefit to a defendant, for he thereby obtains the advantage of any aversion which jurors may have to the weighty punishment accompanying conviction. See *State* v. *Martin*, 92 N. J. L. 436, 447, 106 Atl. 385, 389. It is to be noted that reversals should be restricted to those cases where the defendant objected and excepted at the trial, and where it is very clear that a charge on a lower grade of homicide was inapplicable.

DIVORCE — ALIMONY — WHETHER CONTEMPT IN FAILING TO PAY IS PUNISHABLE BY DISMISSING COMPLAINT. — The plaintiff had brought an action for divorce against his wife. Upon his failure to pay alimony and counsel fees awarded to her, she moved to strike out his complaint. *Held*, that the motion be denied. *Naveja* v. *Naveja*, 179 N. Y. Supp. 881.